



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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Peter F. Kilmartin, Attorney General

VIA EMAIL ONLY

June 12, 2015

PR 15-33

Ms. Linda Lotridge Levin

Re: Access/Rhode Island v. Providence Police Department

Dear Ms. Levin:

The investigation into your Access to Public Records Act ("APRA") complaint filed on behalf of Access/Rhode Island against the Providence Police Department ("Police Department") is complete. Your December 17, 2014 complaint related that Access/Rhode Island, through its contractor MuckRock, sent a MuckRock staffer to the Providence Police Department on May 15, 2014 to request certain records. Your complaint contains the following quotation:

"A records clerk indicated that all request logs are available online. The MuckRock staffer checked the department website on her phone, and found that it does not yet have logs posted for the four previous days. The logs posted online also did not include the name of the arresting officer, the home address of the arrested adult, the race of the arrested adult or the gender of the arrested adult for each entry.

'When the MuckRock staffer pointed out these deficiencies in the arrest logs posted online and again asked to submit a records request for the full arrest log for the past week, the receiving clerk referred her to a supervisor. After a lengthy wait, a detective indicated that APRA requests must be submitted via the city's online request portal, and that the department was unable to accept any requests submitted in person. When the MuckRock staffer asked to submit a written request that could be passed on to the Providence Law Department for processing, the detective indicated that he did not have any of the appropriate forms on hand. After more than an hour, the detective made clear that he would not accept a request submitted in-person, and the MuckRock staffer left the department without having submitted the APRA request.'"

It is significant that your complaint quoted the above material, although the original source of the quote was not revealed or supported in your complaint. Additionally, after quoting the above,

your complaint alleged no particular violation of the APRA and referenced no provision of the APRA that was allegedly violated. Immediately following the above quotation, you alleged that the Providence Police Department violated the APRA when it failed to timely respond to a separate MuckRock APRA complaint “violating § 38-2-3(e).”

By letter dated January 6, 2015, this Department acknowledged receipt of your complaint and indicated that your complaint alleged that the Police Department violated the APRA “when it failed to timely respond to Muckrock’s APRA request for arrest log information for the past twenty-four hours (22 business days), see R.I. Gen. Laws § 38-2-3(e).” It is significant to the instant finding that this allegation, i.e., the untimely response, was the only allegation referenced in this Department’s January 6, 2015 acknowledgment letter. Our acknowledgement letter did not reference the above-quoted series of events – because your complaint did not contain an allegation and because no APRA allegation was apparent based upon a reading of your complaint. This Department’s acknowledgement letter, which again raised only the allegation of an untimely response, indicated that “[i]f you have any additional information that you wish this Department to consider, or if this acknowledgment letter does not accurately reflect your complaint, please contact me in writing within five (5) business days.” (Emphasis added) We received no such correspondence indicating that this Department’s acknowledgment letter was incorrect or incomplete until your January 30, 2015 rebuttal. Your January 30, 2015 rebuttal expressed, for the first time, Access/Rhode Island’s allegation that the Police Department “improperly denied a request to file a records request other than through the City’s online request portal.” This allegation relates to the above-quoted material discussed, supra.

By letter dated January 21, 2015, Assistant City Solicitor, Kathryn M. Sabatini, Esquire, provided a substantive response with an accompanying affidavit. Because the City received an investigatory demand request similar to the acknowledgment letter you received, specifically, a letter that identified the only issue presented as the failure to timely respond to MuckRock’s APRA request, the City’s response was limited to the untimely response issue and did not address the series of events that you alleged transpired at the Police Department. With respect to the issue that was identified in your complaint, our acknowledgment letter, and our investigatory demand letter, the City, in brief, contends that its response was timely and in accordance with the APRA.¹

Thereafter, by letter dated January 30, 2015, you filed a rebuttal. In relevant part this rebuttal indicated that:

¹ The City only briefly mentions Access/Rhode Island’s lack of standing to file this complaint and contends that since it did not violate the APRA it need not press this argument. With respect to any argument that Access/Rhode Island lacks standing to file the instant complaint, we addressed this issue in a related complaint and our conclusion applies equally to this case. See Access/Rhode Island v. West Warwick School Department, PR 15-24. As such, we review this complaint solely on the basis of this Department’s independent statutory authority. R.I. Gen. Laws § 38-2-8(d).

“[o]ur complaint alleged two violations of APRA: that the [Police] Department had (1) improperly denied a request to file a records request other than through the City’s online request portal; and (2) failed to respond to another request for certain arrest records in a timely manner.”

Your rebuttal continues that the Police Department’s response “does not address at all, and therefore does not dispute, the first allegation,” and as such, you request that this Department find that the Police Department violated the APRA with respect to this allegation. After reviewing the City’s response to the allegation that the Police Department failed to timely respond to MuckRock’s APRA request, your rebuttal indicates that Access/Rhode Island “withdraw[s] this claim of a violation of APRA.”

At the outset, we observe that in examining whether an APRA violation has occurred, we are mindful that our mandate is not to substitute this Department’s independent judgment concerning whether a violation has occurred, but instead, to interpret and enforce the APRA as the General Assembly has written this law and as the Rhode Island Supreme Court has interpreted its provisions. Furthermore, our statutory mandate is limited to determining whether the Police Department violated the APRA. See R.I. Gen. Laws § 38-2-8. In other words, we do not write on a blank slate.

Because you have withdrawn your allegation that the Police Department violated the APRA when it untimely responded to MuckRock’s APRA request, the only “issue” for this Department to examine is the contention that the Police Department “improperly denied a request to file a records request other than through the City’s online request portal.” As detailed above, even if it could be argued that your APRA complaint contained this allegation, this Department’s acknowledgment did not contain this allegation and you provided no correction until the January 30, 2015 rebuttal – well after the City had already provided its response.

Consistent with this Department’s precedent, we decline to address an issue that was first raised in a rebuttal and that a public body has not had the opportunity to address. See Boss v. City of Woonsocket’s School Board Review Committee, OM 14-19; Mudge v. North Kingston School Committee, OM 12-35 (Department of Attorney General will not consider allegations first raised in rebuttal). Clearly, the Police Department had no occasion to address this issue and our January 6, 2015 acknowledgment letter made clear that “if this acknowledgment letter does not accurately reflect your complaint, please contact me in writing within five (5) business days.” We received no response regarding this issue. Moreover, this Department’s acknowledgment letter also related that “[y]our rebuttal should be limited to the matters addressed in the response and should not raise new issues that were not presented in your complaint or addressed in the response.” Accordingly, it would be improper for us to decide a matter that was first confirmed or clarified as an allegation in your rebuttal where the Police Department had no opportunity to present its arguments or evidence to this Department. Additionally, if we required a public body to respond to an issue post-rebuttal – when the issue should have been corrected within five (5) business days of our acknowledgment letter – we would be needlessly extending the timeframe within which open government cases are resolved by seeking a further response from a public body and presumably allowing an additional rebuttal from you, once again, limited to the issues

addressed within the public body's response. To further delay the resolution of other open government cases when the issue in this case could have been clarified or corrected at the earliest possible juncture does not serve the public interest. See R.I. Gen. Laws § 38-2-8(b); Access/Rhode Island v. West Warwick School Department, PR 15-24.

While the foregoing suffices to complete our examination of this matter, it bears noting that our conclusion is reinforced because our review of the City's website finds that the City has promulgated APRA procedures and these procedures require that "[a] request to inspect and/or copy public records of the City of Providence must be presented in writing to the Public Records Unit at 444 Westminster Street, Suite 220, Providence, RI 02903 during normal business hours.² See <http://www.providenceri.com/efile/366>. While it is unclear to us whether this precise APRA procedure was in place at the time of MuckRock's APRA request, considering that neither Access/Rhode Island nor MuckRock has addressed the content of the City's APRA procedures at the time of MuckRock's APRA request, that Access/Rhode Island did not specifically identify this as an issue in its complaint until its rebuttal, and that the City did not address this issue because it was not identified as an issue requiring its response, prudence and precedent dictates that we decline to address this matter through this finding. See e.g., Access/Rhode Island v. New Shoreham Police Department, PR 15-26 (no violation where MuckRock APRA request not made in accordance with promulgated APRA procedure); Stafford v. Rhode Island Family Court, PR 11-13 (no violation where promulgated APRA procedure not followed).

Although the Attorney General has found no violation and will not file suit in this matter, nothing within the APRA prohibits an individual or entity from obtaining legal counsel for the purpose of instituting injunctive or declaratory relief in Superior Court. See R.I. Gen. Laws § 38-2-8(b). Whether Access/Rhode Island would have standing to do so is, of course, a decision within the jurisdiction of the Superior Court and not this Department. Please be advised that we are closing this file as of the date of this letter.

We thank you for your interest in keeping government open and accountable to the public.

Very truly yours,



Michael W. Field
Assistant Attorney General

Cc: Adrienne Southgate

² The Providence Police Department is not located at this address.